

constitutional doubts are triggered by an administrative regulation,¹⁵ a mere *general* grant of authority to an agency to regulate in an area will not do; the “affirmative intention of Congress clearly expressed” must speak to the specific regulatory action that colorably offends the Constitution. *See National Labor Relations Board v. Catholic Bishop of Chicago, supra*, 440 U.S. 490, 505-507 (1979) (stating that while, “[a]dmittedly, Congress defined the Board’s jurisdiction in very broad terms,” the absence of any clear authorization by Congress led the Court to construe the National Labor Relations Act as not extending NLRB jurisdiction to parochial school teachers).

2. The Commission’s Prior Construction of the Act Undercuts its Current Constitutional Authority to Now Construe its Mandate More Broadly

In its 1991 *Report and Order*, the Commission, in describing its approach toward the programming obligations placed on broadcasters by the Children’s Television Act, pointedly stated that “the legislative history suggest that Congress meant that no minimum criterion be imposed,” describing “[t]his strong legislative direction, and the latitude afforded broadcasters in fulfilling the programming requirement.” *Report and Order, In the Matter of Policies and Rules Concerning Children’s Television Programming and Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, MM Docket 90-570, 6 FCC Rcd 2111 (1991). Similarly, in its 1993 *Notice of Inquiry* the Commission noted that “[i]n

¹⁵ *See Machinists v. Street, supra*, 367 U.S. 740, 749 (1961) (applying the clear statement doctrine in order to avoid “serious doubt of [the Act’s] constitutionality.”).

accordance with the CTA's legislative history . . . no minimum amount of such programming has been prescribed." *Notice of Inquiry In the Matter of Policies and Rules Concerning Children's Television Programming Revision of Programming Policies for Television Broadcast Stations*, MM Docket 93-48, 8 FCC Rcd 1841 (1993). In that *Notice of Inquiry* the Commission further observed that "as Congress intended, television licensees enjoy substantial discretion both in determining *whether a particular program qualifies as educational and informational* and in fixing the *level or amount of children's programming that it will air*." *Id.* (emphasis supplied).

That the Commission itself first understood the Children's Television Act as direction from Congress not to impose specific programming requirements serves to underscore the precarious constitutional position in which the Commission would be placing itself were it now to adopt those requirements. It is well worth noting the stark contrast between the paucity of evidence of congressional endorsement of the regulatory approach now being considered by the Commission and the evidence of congressional endorsement found in such cases such as *Red Lion v. FCC*, *supra*, 395 U.S. 367, 381-86 (1969) and *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 569-58 (1990), prior cases testing major policy decisions by the Commission. In both *Red Lion* and *Metro Broadcasting* the Supreme Court devoted substantial effort in its opinions documenting how the policies adopted by the Commission in those two cases could legitimately be said to possess the imprimatur of Congress. See *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 381-86 (1969) (finding that thirty years of consistent administrative construction left undisturbed by Congress until

that construction was expressly ratified reinforced Commission's authority); *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 569-58 (1990) (finding extensive congressional support for minority ownership policies).¹⁶ In its current expansive proposals for implementation of the Children's Television Act, however, the Commission, standing alone, would be taking steps that Congress could have attempted but did not. It is vigorously argued here, of course, that Congress *could not* take these steps, consistent with the First Amendment. At the very least, however, the authorities cited above dictate that the Commission refrain from experimenting with the delicate constitutional balance unless Congress itself specifically requires such an incursion.

To the extent that the Commission suddenly doubts the efficacy of the license renewal process as a means of effectuating the purposes of the Children's Television Act, or indeed the Communications Act itself, those doubts are of its own making; for Congress and the courts clearly understand that "[l]icense renewal proceedings, in which the listening public can be heard, are a principal means of such regulation." *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 110 (1973) citing *United Church of Christ v. FCC*, 359 F.2d 994, 123 U.S.App.D.C. 328 (1966); 425 F.2d 543, 138 U.S.App.D.C. 112

¹⁶ The substantive equal protection principles governing federal affirmative action programs adopted by the Supreme Court in *Metro Broadcasting* were overruled by the Court's recent decision in *Adarand Constructors, Inc., v. Peña*, 115 S.Ct. 2097, 2111-17 (1995). *Adarand*, however, does not detract from the administrative law and statutory construction principles applied in *Metro Broadcasting* or *Red Lion*, pursuant to which the Court expended prodigious effort to demonstrate that the Commission's actions enjoyed the endorsement of Congress.

(1969). There is no question that flexible application of the standards of the Children's Television Act through the license renewal process is precisely what Congress intended. See 101st Cong., 2nd Sess., 136 Cong. Rec. H. 8536, 8537 (October 1, 1990) (remarks of Rep. Markey), *supra*, ("The bill provides the Commission broad discretion, *during the license renewal process*, to review a station's commitment to educational and informational programming for children.") (emphasis supplied).¹⁷ The Commission is constitutionally bound to respect that intent.

IV. Conclusion: The Marketplace, Paternalism, and Children's Broadcasting

The impulse to improve the quality of children's educational and informational programming is laudable.¹⁸ Drawing on this commendable impulse, Chairman Reed Hundt recently advanced the view that the Commission's current proposals regarding children's programming do not run afoul of the First Amendment. The Chairman's theme was that the law sometimes does infringe on the natural freedom citizens enjoy in the open marketplace, particularly in the interest of protecting the interests of families and children; thus zoning

¹⁷ The Act itself, of course, speaks of enforcement entirely through the license renewal process. 47 U.S.C. § 303b ("(a) After the standards required by section 303a of this title are in effect, the Commission shall, in its review of any application for renewal of a commercial or noncommercial television broadcast license, consider the extent to which the licensee-- (1) has complied with such standards; and (2) has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.").

¹⁸ There are extant today a growing number of eloquent pleas for more creative educational programming. See Newton N. Minow and Craig L. LaMay, *Abandoned in the Wasteland* (1995).

laws restrict land uses in residential neighborhoods, and safety laws require children to wear motorcycle helmets. *See* Chairman Reed E. Hundt, *Long Live Frieda Hennock*, Speech Delivered on August 24, 1995 (“Notwithstanding First Amendment challenges, courts have repeatedly held that government can require certain magazines on open newsstands to be in brown paper wrappers. Government can zone certain kinds of stores away from residential neighborhoods. Government can require kids on motorcycles to wear safety helmets. The FCC can forbid radio and television shows from broadcasting indecent material until after 10 PM, when almost all kids are or should be in bed. None of these actions are inconsistent with the First Amendment and reasonable steps to use the airwaves in a real, specific concrete way to provide public interest programs are also not barred by the First Amendment.”).

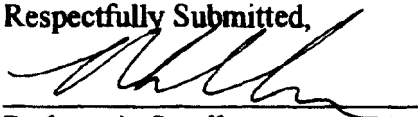
The philosophical view advanced by the Chairman is appropriate for vast areas of American economic and social life. Our Constitution and our traditions of governance do not require blind faith in the efficacy of the free market. Experience has taught us that laws often are necessary to protect the quality of life in residential neighborhoods, or children from head injuries in motorcycle accidents. But with great respect, the Chairman’s philosophy has been roundly rejected in matters dealing with freedom of expression. When the First Amendment is implicated, paternalism is the exception, not the rule. The regulation of freedom of expression is not the same as the regulation of land use or safety helmets. To repeat the Supreme Court’s recent admonition, “[w]hile the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better

reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.” *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, supra*, 115 S.Ct. at 2350. Although the First Amendment, at present, may countenance such narrow regulation of the content of broadcasting as the indecency proscriptions upheld in *Pacifica*, it has *never*, even in the special sphere of broadcasting, been understood to permit the government to commandeer the speech rights of independent speakers, forcing them to produce messages the government deems socially desirable. *See, e.g., Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976) (striking down “highly paternalistic” advertising restrictions); *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 790-91 (1988) (“[t]he State’s remaining justification--the paternalistic premise that charities’ speech must be regulated for their own benefit--is equally unsound. The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it.”) *citing Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 224 (1987). *See also First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791-792, and n. 31 (1978) (criticizing State’s paternalistic interest in protecting the political process by restricting speech by corporations); *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85, 97 (1977) (criticizing, in the commercial speech context, the State’s paternalistic interest in maintaining the quality of neighborhoods by restricting speech to residents); *Thomas v. Collins*, 323 U.S. 516, 545 (1945) (Jackson, J., concurring) (“The very purpose of the First Amendment is to foreclose public authority from assuming a

guardianship of the public mind through regulating the press, speech, and religion.”); *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.”).

The government is not powerless in this matter. The Children’s Television Act does impose obligations on broadcasters, and the Commission is directed, in license renewal proceedings, to treat those obligations seriously. The Commission may use its persuasive powers, and the Chairman the bully pulpit, to cajole broadcasters and encourage more innovative children’s programming. And ultimately, of course, if the government perceives deficiencies in the offerings of the marketplace, it may enter the market itself to sell its own wares.¹⁹ The government may directly or indirectly subsidize the creation and broadcast of high-quality children’s programming. But what the First Amendment does not permit is for government to pursue its objectives through the simple expedient of *fiat*.

Respectfully Submitted,



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¹⁹ See *Block v. Meese*, 793 F.2d 1303, 1313 (D.C. Cir. 1986) (Scalia, J.) (“Nor does any case suggest that “uninhibited, robust, and wide-open debate” consists of debate from which the government is excluded, or an “inhibited marketplace of ideas” one in which the government’s wares cannot be advertised.”).

APPENDIX C

**Children's Programs, sorted by P2-11 Rating
May 2000 Nielsen Sweep Period (4/27-5/24/00)**

E/I Programs Highlighted in Yellow

PROGRAM NAME	PRG CODE	SOURCE	E/I?	PROG LENGTH	STNS	% COV	TVHHS	RANKING		TVHHS	RATING	
								P2-11	P12-17		P2-11	P12-17
POKEMON1030AM - WB	CH	WB		30	Network		1	1	2	2.3	4.4	2.5
POKEMON2 - WB	CH	WB		30	Network		1	2	2	2.3	4.2	2.5
ACTION MAN(S)-05/20/2000	CH	FOX		60	Network		3	3	7	2.2	4.1	2.0
DIGIMON:DGTL MONSTERS-SAT	CH	FOX	E	30	Network		12	3	19	1.8	4.1	1.6
POKEMON 9AM - WB	CH	WB		30	Network		6	5	3	2.0	3.8	2.2
DIGIMON: DIGITAL MONSTERS	CH	FOX	E	30	Network		8	6	11	1.9	3.6	1.9
DISNEY'S 1 SAT MORNING-4	CH	ABC	E	30	Network		5	9	4	2.1	3.4	2.1
POKEMON2 (M-F) - WB	CH	WB		120	Network		12	9	16	1.8	3.4	1.7
DISNEY'S 1 SAT MORNING-3	CH	ABC	E	30	Network		3	11	4	2.2	3.3	2.1
NASCAR RACERS	CH	FOX		30	Network		21	11	39	1.6	3.3	1.0
DISNEY'S PEPPER ANN WKND	CA	BUENA VISTA	E	30	118	83	21	13	4	1.6	3.1	2.1
DISNEY'S RECESS WEEKEND	CA	BUENA VISTA	E	30	114	83	21	14	1	1.6	3.0	2.6
DISNEY'S MICKEY MOUSEWORK	CH	ABC		30	Network		21	15	44	1.6	2.9	0.9
MAX STEEL - WB	CH	WB		30	Network		12	15	11	1.8	2.9	1.9
MONSTER RANCHER-SAT	CH	FOX		30	Network		29	15	47	1.4	2.9	0.8
SABRINA, ANIMATED SERIES	CH	ABC	E	30	Network		16	15	24	1.7	2.9	1.5
SABRINA, ANIMTD SERIES WK	CA	BUENA VISTA	E	30	114	83	25	15	16	1.5	2.9	1.7
DIGIMON M-F	CH	FOX	E	120	Network		29	20	28	1.4	2.8	1.4
DISNEY'S 1 SAT MORNING-2	CH	ABC	E	30	Network		8	20	24	1.9	2.8	1.5
BEAST MACHINES-SAT	CH	FOX		30	Network		25	22	31	1.5	2.7	1.3
BUGS BUNNY/TWEETY SHOW	CH	ABC		30	Network		29	23	47	1.4	2.6	0.8
NEW ADVENT/WINNIE-POOH	CH	ABC	E	30	Network		29	23	39	1.4	2.6	1.0
PWR RNGRS LGHT SPD RESCUE	CH	FOX		30	Network		34	23	55	1.3	2.6	0.6
BATMAN BEYOND2 - WB	CH	WB		30	Network		16	26	11	1.7	2.5	1.9
DUNGEONS & DRAGONS	CH	FOX		30	Network		25	26	31	1.5	2.5	1.3
MEN IN BLACK - WB	CH	WB		30	Network		16	26	7	1.7	2.5	2.0
SQUIGGLEVISION	CH	ABC	E	30	Network		29	26	47	1.4	2.5	0.8
MAGIC SCHOOLBUS	CA	FOX BROADCASTING	E	30	129	69	52	31	55	1.0	2.4	0.6
SCHOOLHOUSE ROCK-11:25AM	CH	ABC	E	5	Network		34	31	55	1.3	2.4	0.6
DISNEY'S DOUG WEEKEND	CA	BUENA VISTA	E	30	109	81	45	33	24	1.1	2.3	1.5
SABRINA, ANIMTD SERIES M-F	CA	BUENA VISTA	E	30	114	79	39	34	19	1.2	2.2	1.6
DETENTION - WB	CH	WB	E	30	Network		25	36	24	1.5	2.1	1.5
DISNEY'S 1 SAT MORNING-1	CH	ABC	E	30	Network		16	36	44	1.7	2.1	0.9
FLINT THE TIME DETECTIVE	CH	FOX		30	Network		34	36	31	1.3	2.1	1.3
DRAGON BALL Z 1	CA	PROGRAM EXCHANGE		30	25	24	39	39	35	1.2	2.0	1.1
PWR RNGRS LOST GALAXY M-F	CH	FOX		120	Network		52	39	52	1.0	2.0	0.7

Children's Programs, sorted by P2-11 Rating
May 2000 Nielsen Sweep Period (4/27-5/24/00)

E/I Programs Highlighted in Yellow

PROGRAM NAME	PRG CODE	SOURCE	E/I?	PROG		% COV	TVHHs	RANKING		TVHHs	RATING	
				LENGTH	STNS			P2-11	P12-17		P2-11	P12-17
BEAST WARS T-F	CH	FOX		120	Network		45	42	39	1.1	1.9	1.0
DISNEY'S RECESS M-F	CA	BUENA VISTA	E	30	111	80	39	42	7	1.2	1.9	2.0
BATMAN/SUPERMAN2(M-F)-WB	CH	WB		120	Network		34	45	31	1.3	1.8	1.3
DISNEY'S PEPPER ANN M-F	CA	BUENA VISTA	E	30	108	80	45	45	19	1.1	1.8	1.6
RECESS WKND	CH	UPN	E	30	Network		34	45	16	1.3	1.8	1.7
VOLTRON-3RD DIMENSION	CA	SUMMIT MEDIA		30	124	76	45	45	39	1.1	1.8	1.0
SHERLOCK HOLMES-MON	CH	FOX	E	30	Network		60	50	47	0.9	1.7	0.8
BATMAN BEYOND - WB	CH	WB		30	Network		39	51	35	1.2	1.6	1.1
MAGIC SCHOOL BUS M-F	CH	FOX	E	120	Network		52	51	52	1.0	1.6	0.7
GARFIELD AND FRIENDS	CA	PROGRAM EXCHANGE		VAR	36	29	52	54	19	1.0	1.5	1.6
SABRINA: ANIMATED WKND	CH	UPN	E	30	Network		45	57	28	1.1	1.4	1.4
STREET SHARKS-BKN	CA	BOHBOT		30	67	40	65	57	55	0.8	1.4	0.6
DISNEY'S DOUG M-F	CA	BUENA VISTA	E	30	115	83	65	59	35	0.8	1.3	1.1
PEPPER ANN WKND	CH	UPN	E	30	Network		45	59	28	1.1	1.3	1.4
BATMAN/SUPERMAN (M-F)-WB	CH	WB		120	Network		52	62	44	1.0	1.2	0.9
CAPT SIMIAN&SPC MNKYS-BKN	CA	BOHBOT		30	96	44	60	62	61	0.9	1.2	0.5
MAX STEEL-5/19-WB(S)-05/19/2000	CH	WB		30	Network		60	62	52	0.9	1.2	0.7
RAMBO-BKN	CA	UNIVERSAL		30	92	40	73	62	81	0.7	1.2	0.1
FLYING RHINO JR. HIGH	CH	CBS	E	30	Network		73	66	76	0.7	1.1	0.2
DISNEY'S PEPPER ANN	CH	ABC	E	30	Network		52	67	61	1.0	1.0	0.5
DOUG WKND	CH	UPN	E	30	Network		65	67	35	0.8	1.0	1.1
RESCUE HEROES	CH	CBS	E	30	Network		73	67	81	0.7	1.0	0.1
SAILOR MOON	CA	SEAGULL		30	29	24	60	67	55	0.9	1.0	0.6
BLASTER'S UNIVERSE	CH	CBS	E	30	Network		65	74	81	0.8	0.9	0.1
DENNIS THE MENACE CARTOON	CA	PROGRAM EXCHANGE		VAR	13	14	73	75	61	0.7	0.8	0.5
REAL ADVENTRS-JONNY QUEST	CA	PROGRAM EXCHANGE		30	14	14	85	75	69	0.6	0.8	0.3
BILL NYE SCIENCE GUY	CO	BUENA VISTA	E	30	177	89	65	77	69	0.8	0.7	0.3
GUARDIANS OF THE LEGEND	CH	CBS	E	30	Network		73	77	69	0.7	0.7	0.3
JUMANJI WEEKEND-BKN	CA	BOHBOT		30	29	20	85	77	55	0.6	0.7	0.6
NEW TALES FRM CRYPTKEEPER	CH	CBS	E	30	Network		85	77	69	0.6	0.7	0.3

Children's Programs, sorted by P2-11 Rating
May 2000 Nielsen Sweep Period (4/27-5/24/00)

E/I Programs Highlighted in Yellow

PROGRAM NAME	PRG CODE	SOURCE	E/I?	PROG		% COV	TVHHS	RANKING		TVHHS	RATING	
				LENGTH	STNS			P2-11	P12-17		P2-11	P12-17
WACKY WORLD OF TEX AVERY	CA	PROGRAM EXCHANGE		30	50	29	85	77	65	0.6	0.7	0.4
ANATOLE	CH	CBS	E	30	Network		65	82	81	0.8	0.6	0.1
CITY GUYS-A	CH	NBC	E	30	Network		6	82	7	2.0	0.6	2.0
DOUBLE DRAGON-BKN	CA	BOHBOT		30	91	40	85	82	76	0.6	0.6	0.2
MONSTER RANCHER-BKN	CA	BOHBOT		30	95	37	94	82	65	0.5	0.6	0.4
POPULR MECHANICS FOR KIDS	CN	HEARST	E	30	152	84	60	82	69	0.9	0.6	0.3
REAL LIFE 101	CO	SEBASTIAN INTL	E	30	78	59	73	82	47	0.7	0.6	0.8
HANG TIME	CH	NBC	E	30	Network		8	88	19	1.9	0.5	1.6
JUMANJI M-F-BKN	CA	BOHBOT		30	51	22	96	88	65	0.4	0.5	0.4
KIDS WB TOONS (M-F) - WB	CH	WB		120	Network		85	88	61	0.6	0.5	0.5
ONE WORLD	CH	NBC	E	30	Network		12	88	11	1.8	0.5	1.9
SUPER MARIO BRO SUPER SHW	CA	PROGRAM EXCHANGE		30	7	7	96	88	92	0.4	0.5	<<
BEAKMAN'S WORLD-BKN	CL	BOHBOT	E	30	40	28	96	94	92	0.4	0.4	<<
CITY GUYS-B	CH	NBC	E	30	Network		16	94	15	1.7	0.4	1.8
ROUGHNCKS:STRSHP-CHRN-BKN	CA	BOHBOT		30	92	42	85	94	55	0.6	0.4	0.6
SAVED BY THE BELL	CH	NBC	E	30	Network		8	94	39	1.9	0.4	1.0
WILD ABOUT ANIMALS	CH	STEVE ROTFELD	E	30	61	52	45	94	81	1.1	0.4	0.1
EXTREME DINOSAURS-BKN	CA	BOHBOT		30	20	18	96	100	92	0.4	0.3	<<
MUMMIES ALIVE-BKN	CA	BOHBOT		30	83	33	96	100	69	0.4	0.3	0.3
POCKET DRAGON ADVNTRS-BKN	CA	BOHBOT		30	9	11	103	100	81	0.3	0.3	0.1
EXTREME GHOSTBUSTERS-BKN	CA	BOHBOT		30	77	23	103	104	81	0.3	0.2	0.1
PRESSURE	CH	HEARST ARGYLE	E	30	135	70	73	104	69	0.7	0.2	0.3
SKYSURFER STRIKE FRCE-BKN	CA	BOHBOT		30	28	20	96	104	81	0.4	0.2	0.1
SONIC UNDERGROUND-BKN	CA	BOHBOT		30	87	29	103	104	76	0.3	0.2	0.2
BLOOPYS BUDDIES	CH	LITTON	E	30	18	12	114	108	92	0.1	0.1	<<
FIELD TRIP	CL	WESTERN INTL	E	30	85	57	96	108	81	0.4	0.1	0.1
JACK HANNA'S ANML ADV 1	CH	PAX	E	120	Network		111	108	92	0.2	0.1	<<
JACK HANNA'S ANML ADV 2	CH	PAX	E	120	Network		111	108	92	0.2	0.1	<<
SUPERBOOK	CA	VICTOR KING/CBN	E	VAR	10	9	114	108	92	0.1	0.1	<<
BULLWINKLE SHOW	CA	PROGRAM EXCHANGE		VAR	13	5	103	114	92	0.3	<<	<<
KING ARTHR&KNIGHTS-JST-BKN	CA	BOHBOT		30	23	16	103	114	92	0.3	<<	<<
QUIGLEYS VILLAGE	CH	TRINITY BROADCASTING		30	9	8	114	114	92	0.1	<<	<<

APPENDIX D

**GETTING THE WORD OUT:
NAB ACTION KIT ON CHILDREN'S PROGRAMMING**

OVERVIEW

Local television stations throughout the country broadcast a wide variety of educational and informational (E/I) children's programming. Many stations, in fact, go above and beyond the federal requirement that they devote three hours of airtime per week to making these programs available to their youngest viewers.

The challenge facing many stations in trying to build a significant audience for their regularly scheduled E/I programs is alerting both parents and children about these programs. Similarly, the Federal Communications Commission (FCC) would like to see more notice about educational and informational programs getting to this same audience. The federal government now requires that stations carry out certain public information activities in connection with E/I programming, but getting the word out is never easy. Local newspapers and programming guides, for example, rarely identify the intended audience for various programs, nor do they tell families which shows are considered educational and informational programming and which are not.

The solution to this problem is for stations to get creative and try new things. By working with partners in the community and getting the word out in new and different ways, local broadcasters can build their audiences for this worthwhile programming while demonstrating their commitment to community service and children.

This action kit includes ideas for promoting your station's educational and informational programming, as well as a "plain English" summary of the federal government's children's television rules. Stations are encouraged to use these materials to step up their local promotional efforts—and to make their children's programs a win-win for everybody!

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BACKGROUND: THE CHILDREN'S TELEVISION RULES

Overview. The Children's Television Act of 1990 (CTA) established a specific programming obligation for each television licensee to serve the "educational and informational needs" of children through both its overall programming and programming specifically designed for this purpose.

The Federal Communications Commission (FCC) adopted rules implementing the Act in 1991. In 1996, the Commission established new programming rules to strengthen its enforcement of the Act. With those new rules, the FCC adopted new public information requirements, tightened the definition of qualifying programming, and established a three-hours-per-week requirement for "specifically designed" educational and informational children's programming.

The Three-Hour Rule. Under the FCC rules, broadcasters must air three hours of "core" educational and informational children's programming per week (averaged over a six-month period). Stations can satisfy the requirement by airing somewhat less than three hours of programming, but only if what's on the air demonstrates at least an equivalent level of commitment to educating and informing children.

Defining Core Programming. Educational and informational programming is defined by the FCC as *"any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs."* The core programming that is subject to the FCC's three-hour rule is any programming that meets this definition while also satisfying the following criteria:

- It is created to serve the educational and informational needs of children 16 and under as "a significant purpose;"
- It airs between the hours of 7:00 a.m. and 10:00 p.m.;
- It is a regularly scheduled weekly program;
- It is at least 30 minutes in length; and
- It is identified on-air at the beginning of the program and in listings provided to publishers of program guides as educational and informational, with a target age group noted.

Preemption Rules. Because core programming has to be regularly scheduled, preemptions can pose a problem for stations in meeting the three-hour threshold. Rather than establishing a general policy on how much preemption is allowed and under what circumstances, in July 1997 the FCC sent individualized letters to ABC, CBS and NBC approving each network's plan for handling preemptions caused by broadcast of live sports. The Commission's approval was based on such considerations as specific rescheduling and notice plans, including prime-time promotion of rescheduled programs.

Beginning in 2001, the FCC Form 398 (Children's Quarterly Report) will have additional reporting requirements, including a Preemption Report. Stations must provide a detailed explanation for each preemption of core programming.

Public Information Initiatives. Local stations must identify specifically designed educational and informational programming at the beginning of the program. Although the Commission is considering implementing a uniform E/I concurrently, it is up to stations how they do this—for example, by using an announcement or an icon on the screen. Broadcasters also must provide information identifying “core” children’s programs to the publishers of program guides, with the information including an indication of the age group for which the program is intended.

Several networks use the designation E/I, followed by the target age range in parenthesis, as a common designator for core programming that will be furnished to program listing services. In addition, stations are required to publicize the existence and location of their Children’s Television Programming Reports. The rules do not specify how stations should do this, but the FCC encourages periodic on-air announcements.

Reporting. Beginning in 2001, stations are required to electronically file their Children’s Television Programming Reports (Form 398) on a quarterly basis. The World Wide Web Address is: <http://www.fcc.gov/mmb/>.

For more information, refer to NAB’s Legal Department counsel memos on NAB’s web site (www.nab.org) or contact the Legal Department at 202-429-5430.

WHO’S GETTING THE WORD OUT? For teens in the Twin Cities area of Minnesota, KARE-11 TV’s “**Whatever**” is a great source of information and perspective on everything from entertainment and sports to issues in the news. Airing on Saturday and Sunday mornings at 10 o’clock, the program is anchored and reported by teens, with an all-teen editorial board deciding what topics to cover from week to week.

Proof of the popularity of the program among its target audience comes every spring, when KARE-11 holds annual auditions for spots on the on-air and editorial board teams. During the 2000 auditions, held at the Mall of America in Bloomington, more than 650 area teens tried out for six open positions. According to the station, the auditions have become an important tool for increasing the program’s visibility. In addition to promoting the auditions on the air, station staff send letters to theater and speech teachers in local schools encouraging them to get the word out among their students. The station also cross promotes the auditions on its own morning program as a news event.

In other outreach throughout the year, KARE-11 has secured numerous articles in local newspapers about the “**Whatever**” program, including stories in the youth news section of the *Minneapolis Star-Tribune*. In addition, participating teens have written articles about their experiences for their school papers, and they regularly appear in the community as MCs for awards dinners and other events.

PROMOTION IDEAS

Providing programming information to local program guides is just the tip of the iceberg. Local broadcasters can undertake a wide range of activities to promote their educational and informational programming for children. Many if not all of the activities below can be undertaken in support of network, syndicated and locally produced programming.

- **Team up with community partners to produce your own children's programming guides and information.** Stations should consider working with local grocery chains and other family-oriented businesses to produce and distribute flyers or pamphlets highlighting your regularly scheduled educational and informational programming. Maybe your partner or partners will help underwrite the costs of producing the pamphlet. Or in place of a pamphlet, you might want to approach your partners about printing programming information on grocery bags and tray liners. Yet another option is to develop an in-store display.
- **Have characters and stars from your children's programming appear at community events.** Create a portable booth or display that you can set up at family-oriented events such as walk-a-thons, street and county fairs, and community festivals. Get characters or on-air personalities from your station's educational and informational programming to staff the booth, pose for pictures, and hand out prizes and other items. Be sure to have program guides on hand listing all of your station's children's shows and when they air.
- **Organize essay and video contests.** Promote opportunities for children in the community to appear during your station's educational and informational programming. One idea is to organize an essay contest on an educational topic or an important issue facing the community's young people, with the winner(s) appearing on the air to read from their entries. You might also want to work with schools to organize video contests, with students producing and submitting documentaries or news features. Be sure to include programming information in all of your efforts to promote the contests.
- **Create and distribute promotional items.** Trinkets including fridge magnets, pencils and erasers, stickers for the little ones and even t-shirts can go a long way to building and maintaining awareness of your station's educational and informational programming. Include program logos and times, where possible, and distribute the items at school appearances, community events and through on-air promotions.
- **Piggyback on existing public service efforts at the station.** Does your station sponsor charity walks and community fund raisers? Send anchors, weather personalities and other on-air talent into local schools to talk with students? If so, take advantage of these and other opportunities to inform parents and young people alike about the station's educational and informational children's programming. Distribute informational materials about your programs and organize appearances by

WHO'S GETTING THE WORD OUT? *The WBNS 10 TV Kids News Network*

is the Columbus, Ohio station's long-running program produced "for kids and by kids." Annual auditions for the program yield a pool of 25 to 30 young reporters and anchors who appear on the air throughout the year with news and information for their peers. Targeted at an early-teen audience, the award-winning weekly program has tackled such topics as gun safety and gang awareness, in addition to entertainment stories and "teen takes" on the news.

How does WBNS 10 TV promote the *Kids News Network* to make sure the program is reaching the intended audience? In addition to promotions on the WBNS 10 TV website and the standard notices to local programming guides, one strategy the station has used is to buy ads in high school newspapers in the community. The station also sets up a booth for the show at family-oriented community events throughout the year such as horse shows and the Columbus Marathon. Teen reporters and anchors staff the booth and hand out free promotional items from pencils to zipper pulls while a videotape provides passersby with a better idea of what the program's all about.

characters and stars from the shows—whatever it takes to let people know what you're putting on the air and when.

- **Consider alternative publicity outlets.** In addition to the local programming guides, think about other outlets for news and information about your station's educational and informational programming. Many newspapers, for example, have special kids sections. In larger markets, there are locally oriented parenting magazines. Other often-ignored outlets for free and paid publicity include school newspapers and community "shoppers." Think about storylines tied to your programming that local papers might want to cover. And develop relationship with key editors and reporters—both on and off the television beat—to insure that your programs get the special attention they deserve.

- **Work "cross promotions" into news and other programming.** Of course, there are plenty of opportunities on your own station to promote what you're doing to meet the educational and informational needs of children. You might want to produce a news feature, for example, on how local youths are involved in the production of your programs. Or how about an on-air interview during the news with the host of the show? Alternatively, you might want to feature a short program note in your local news every Friday about the weekend's educational and informational offerings for children.

- **Team up with local youth-serving organizations to help promote your programming.** Youth-serving organizations such as the Boy and Girl Scouts, 4-H, and Boys' and Girls' Clubs are natural partners in making sure that young people in your community are aware of the educational and informational programming on your station. Consider organizing appearances before these and other groups by the characters and

hosts from your children's shows. Distribute programming information and schedules to community youth centers. And consider covering the activities of these organizations in your children's programming to build buy-in and support.

- **Encourage people to check out your Children's Television Programming Reports.** As part of its public information requirements, the FCC says that stations must "publicize in an appropriate manner" their Children's Television Programming Reports. That means making sure viewers know that these reports exist, as well as directing them to the location of the reports. The FCC is posting stations' Form 398 Reports on the Commission web site at <http://www.fcc.gov/>. The FCC encourages periodic on-air announcements about the reports, but stations also can use their web sites and other outreach programs to direct viewers to the FCC site.

WHO'S GETTING THE WORD OUT? The WPWR-TV program, "**Up and Running**," provides Chicago-area youth with fun and informative stories on a different theme every week. Recent programs have included "H2O: All About Water" and "Put It Together," which looked at everything from piecing together dinosaur bones to building bicycles from recycled parts.

WPWR promotes each week's program with 30- and 10-second on-air spots starting four days before the program airs. In addition, the station's promotional staff works closely with the editors of the weekly program guides produced by the major Chicago papers to make sure "Up and Running" gets cover-story treatment from time to time and, at the very least, receives prominent mention in the listings. The WPWR promotional staff also works with the editors of a weekly Kids News section published by *The Chicago Tribune* to make sure the section's readers know about "Up and Running."

In other promotional activities, the producers of the program generally work with organizations that are featured in "Up and Running"—such as the YMCA or the zoo—to broaden its reach. In thank-you letters and other outreach, they encourage the featured groups to help promote the show in their own newsletters and via bulletin boards, websites and other communications.